

APR - 1 2019

AMY J HUNLEY
CLERK OF SUPERIOR COURT
By _____ Deputy

1 THE W LAW FIRM P.L.L.C.

2 David T. Wilkison, Esq.
3 P.O. Box 75
4 Vail, Arizona 85641
5 (520) 647-0531
6 david@thewlawfirm.com
7 State Bar No. 029548

8 Attorney for Defendant

9
10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11
12 IN AND FOR THE COUNTY OF COCHISE

13 THE STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 MICHAEL TURNER,

17 Defendant.

Case No.: CR201801167

**MOTION TO SUPPRESS EVIDENCE,
AND TO DISMISS (Warrantless entry with
no exigencies present)**

The Honorable James L. Conlogue
Division V

18 COMES NOW, the Defendant, MICHAEL TURNER, by and through counsel
19 undersigned, pursuant to the United States Constitution, the Fourth and Fourteenth Amendments,
20 and the Arizona Constitution, Article 2 '8, hereby respectfully requests this court to suppress any
21 and all evidence seized from the house the Defendant's residence¹ for the following reasons that
22 such evidence was obtained without a warrant or the presence of exigent circumstances.

23 **I. FACTS**

24 On December 5, 2018, Officers Olmstead, and Larimer conducted a traffic stop for a civil
25 violation. It was found that during the stop, the occupants of the vehicle had purchased
26 Methamphetamine from Sherill Rogers at her address, 217 N. First Street, Sierra Vista, AZ.
27 85635. A search warrant was drafted based on the information from the traffic stop. The search
28

¹ 217 N. First Street, APT B, Sierra Vista, AZ. 85635.

1 warrant was specifically for: 1: the person of Sherill Rogers; 2: the premises as described as 217
2 N. First Street, Sierra Vista, AZ. 85635 and 3: A hot pink Dodge Neon vehicle registered to
3 Sherrill Rogers.
4

5 Mr. Turner resides in a small house in the back area of Sherrill Roger's residence. Mr.
6 Turner's address is: 217 N. 1st St. Apt B, Sierra Vista, AZ. 85635. See Exhibit A: Mr. Turner's
7 identification card and Voter ID card.
8

9 The search warrant affidavit (Exhibit B: Search Warrant Affidavit dated December 5,
10 2018) did not mention the search of the apartment that was leased to Mr. Turner. The search
11 warrant affidavit described the residence of Sherrill Rogers as follows:
12

13 •217 N. 1st St, Sierra Vista, AZ, 85635. 217 N. 1st St is a mobile home constructed of
14 wood siding. The residence is gray in color with tan trim surrounding the roof
15 and windows. The residence is situated in a fashion where the front door faces
16 the North and the West side of the residence faces 1st St. The front is raised off of
17 the ground and the entry way is covered by white lattice siding. The door is
18 located on the North West side of the residence. Black in color numbers showing
19 "217" are situated on the west side of the residence and are clearly visible from
20 the street. The Northwest corner of the property is surrounded by a chain-link
21 which continues around to the back side (East) of the residence. Further, a white
22 in color shed can be observed from the street, sitting in the back yard of the
23 residence.
24

25 See Ex. B. p. 1.
26

27 Mr. Turner's residence is not described in the affidavit for the Search Warrant, or in the
28 Search Warrant that was granted by Judge Dickerson. See Exhibit C: Search Warrant signed by
Judge Dickerson dated December 5, 2018. Mr. Turner rented out a house located in the back of

1 Sherrill Rogers residence. Mr. Turner's residence *cannot* be seen from the street and is *not* a
2 "shed." Interesting to note, there is a shed in the backyard of Ms. Roger's residence that is
3 noticeable from the street that was searched the day the search warrant was executed. Again, this
4 is *not* Mr. Turner's residence.
5

6 None-the-less, Mr. Turner's residence was searched by law enforcement when the Search
7 Warrant was executed for Ms. Roger's residence. As a result, a small amount of Marijuana for
8 personal use as well as drug paraphernalia was obtained from Mr. Turner's residence.
9

10 **II. LEGAL ARGUMENT**

11 **(1) State has the burden of proof**

12 Rule 16.2 (b) of the Arizona Rules of Criminal Procedure states "[t]he prosecutor shall
13 have the burden of proving, by a preponderance of the evidence, the lawfulness in all respects of
14 the acquisition of all evidence which the prosecutor will use at trial." "To establish he
15 presumptive invalidity of a search is to establish a prima facie case for suppression; an
16 un rebutted presumption carries the day." *Rodriguez v. Arellano*, 979 P.2d 539, 542 (Ariz. App.
17 Div. I. 1999).
18

19 **(2) The Fourth Amendment**

20 The Fourth Amendment of the United States Constitution and Art. II ' 8 of the Arizona
21 Constitution proscribe unreasonable intrusions by the state into the private domains of individuals.
22 The Fourth Amendment was specifically designed to prevent the unlawful entry into a suspect's
23 home or dwelling. Welsh v. Wisconsin, 466 U.S. 740, 748 (1984). In the context of governmental
24 invasions into the home, the Arizona Supreme Court has repeatedly ruled that the Arizona
25 Constitution offers even greater protection than the Fourth Amendment. State v. Ault, 150 Ariz. 459,
26 466 (1986) (en banc); State v. Bolt, 142 Ariz. 260, 265 (1984). In Bolt, the Arizona Supreme Court
27 held that gaining evidence from a defendant's home while police officers "secured" the home to
28

1 await a warrant, violated the Arizona Constitution. Id. In State v. Ault, supra, it declined to apply the
2 inevitable discovery doctrine to a pair of shoes found in plain view while officers illegally intruded
3 into a suspect's home. Id. at 466. The Ault decision articulated the standard that the Arizona
4 Constitution sets with regard to governmental intrusions into the home "unlawful entry into homes
5 and seizure of evidence cannot be tolerated." Id.

7 Further, warrantless searches and seizures are per se unreasonable, subject to carefully
8 drawn exceptions to the warrant requirement. Coolidge v. New Hampshire, 403 U.S. 443
9 (1970). Moreover, it is "a basic principle of Fourth Amendment Law" that search and seizures
10 inside a dwelling without a warrant are presumptively unreasonable. Payton v. New York 445
11 U.S. 573 (1980). *See also* Glazer v. City of Long Beach 210 F.Supp.2d 1131 (Cal. 2000)
12 (Explicating the 9th Circuits approach to Payton).

13 Evidence obtained pursuant to a search and seizure in violation of the Fourth Amendment
14 shall be suppressed under the judicially developed exclusionary rule. Illinois v. Krull, 480 U.S.
15 340, 347 (1987). Further derivative or secondary evidence "tainted" by the constitutional
16 violation must be suppressed. Wong Sun v. United States, 471 U.S. 471 (1963). The
17 exclusionary rule extends as well to the indirect as to the direct products (derivative products) of
18 unconstitutional conduct. Segura v. United States, 468 U.S. 796, 804 (1984). The Defendant
19 asserts that the search of his apartment in the back of Ms. Roger's residence, without a warrant
20 or valid consent, does not fall within any of the recognized exceptions to the warrant
21 requirement.

23 A defendant must have a reasonable expectation of privacy in the place searched to assert
24 the violation of his Fourth Amendment rights as grounds for challenging the admission of
25 evidence. Rakas v. Illinois, 439 U.S. 128 (1978). An overnight guest has a legitimate
26 expectation of privacy. Minnesota v. Olson, 495 U.S. 91 (2000). As such, the Defendant asserts
27 that he, as the registered guest paying for the house located at 217 N. 1st St. Apt #B, Sierra Vista,
28

1 AZ 85635., had the proper standing to trigger the exclusionary rule. Any evidence resulting
2 directly or indirectly from this illegal search, must be suppressed as fruits of the poisonous tree.

3
4 **(3) No exigent circumstances were present**

5 Officers entered Mr. Turner's residence without a warrant and in the absence of exigent
6 circumstances. "Warrantless searches [of residences and hotel rooms] are per se unreasonable
7 under the fourth amendment, except in a few carefully delineated instances." United States v.
8 Radka 904 F.2d 357, 360-361 (6th Cir.1990). The exigent circumstances exception relies on the
9 premise that the existence of an emergency situation, demanding urgent police action, may
10 excuse the failure to procure a search warrant. Id. Under exigent circumstances, a warrantless
11 entry may be required to secure evidence that is in the process of being lost or destroyed. Such
12 warrantless entries and searches are "presumptively unreasonable." Id. Therefore, the State bears
13 the "heavy burden" of demonstrating exigency. See id.

14 The possible destruction of evidence or a risk of danger to police or others are two
15 situations that can satisfy the exigent circumstances exception. United States v. Johnson, 22 F.3d
16 674, 680 (6th Cir.1994). However, "a warrantless search must be strictly circumscribed by the
17 exigencies which justify its initiation." Mincey v. Arizona, 437 U.S. 385, 393, 98 S.Ct. 2408, 57
18 L.Ed.2d 290 (1978). See also, Johnson, 22 F.3d at 680; United States v. Socey, 846 F.2d 1439,
19 1445 (D.C.Cir.1988) (stating "Once police officers have the requisite belief that destruction of
20 evidence is imminent, their entry must be limited in scope to the minimum intrusion necessary to
21 prevent the destruction of evidence"); United States v. Halliman, 923 F.2d 873, 880
22 (D.C.Cir.1991) (same).

23 **(a) No one posed a threat to destroy or remove evidence**

24 Here, there was never any possibility that anyone would destroy any evidence in Mr.
25 Turner's residence; this is further strengthened that law enforcement did not even know that Mr.
26 Turner's residence even existed when doing their "investigation." Thus, there was no
27 justification for the officers' warrantless entry to Mr. Turner's residence. The instant officers
28 were investigating Sherrill Roger's sale of methamphetamine. Mr. Turner's name or residence
was never mentioned throughout the "investigation."

1 **(b) No one posed a threat to officer safety**

2 There is no indication in any of the reports for the "investigation" that there was any
3 threat to officer safety, quite the opposite actually. When the search warrant was conducted, all
4 parties cooperated in the search. Yet, instead of simply securing and sealing Mr. Turner's
5 residence, the officers proceeded to conduct a warrantless search of the residence.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

In addition to the suppression of the unlawfully seized evidence, Mr. Turner respectfully requests that his case be *dismissed with prejudice* as it is in the interest of justice.

THE W LAW FIRM P.L.L.C.

A Copy of the foregoing
Sent/Emailed on April 1st, 2019
to the following:

Ruth Faulkner, Deputy County Attorney
150 Quality Hill Rd.
Bisbee, Arizona 85603
By: _____

7



THE W LAW FIRM
PLLC

EXHIBIT A



VOTER IDENTIFICATION CARD

COCHISE COUNTY ARIZONA

DAVID W. STEVENS, COUNTY RECORDER

PCT
89-03

ID NUMBER
0200073063

PARTY
- H

DATE F-1
4/3/2007

DOB: 1988

MICHAEL ALLEN TURNER

1711 1ST ST UNIT B

SAN ANTONIO VISTA, AZ 85635-1529

Congress
District
2

Legislative
District
14

V ARD

SCHOOL

68

Arizona

IDENTIFICATION
CARD

NOT FOR FEDERAL IDENTIFICATION



Michael Allen Turner

4d IDN D0339

3 DOB 03/21/1988

1 TURNER

2 MICHAEL ALLEN

8 217 N 1ST ST # E
SIERRA VISTA, AZ 85635-1529

4b EXP

4a ISS 02/01/2018

15 SEX M 18 EYES HAZ

16 HGT 6'-04" 19 HAIR BRO

17 WGT 185 lb

03/21/88

5 DD 6047C3474T1440M8



THE W LAW FIRM
PLLC

EXHIBIT C

IN JUSTICE COURT, PRECINCT NO 5.
IN AND FOR THE COUNTY OF COCHISE

SEARCH WARRANT

COPY

No. *SW 2018 0216*

TO ANY PEACE OFFICER IN THE STATE OF ARIZONA

Proof by affidavit having been made before me on this date, 5th Day of December 2018 by Detective R. Olmstead #1419, I am satisfied that there is probable cause to believe that:

(X) on the person of:

Sherril Rogers, White Female, 5'07", 140lbs, blue eyes, brown hair

DOB: 10-25-59

SSN: 526-35-0867

(X) in and upon the premises known and described as:

217 N. 1st St, Sierra Vista, AZ, 85635. 217 N. 1st St is a mobile home constructed of wood siding. The residence is gray in color with tan trim surrounding the roof and windows. The residence is situated in a fashion where the front door faces the North and the West side of the residence faces 1st St. The front is raised off of the ground and the entry way is covered by white lattice siding. The door is located on the North West side of the residence. Black in color numbers showing "217" are situated on the west side of the residence and are clearly visible from the street. The Northwest corner of the property is surrounded by a chain-link which continues around to the back side (East) of the residence. Further, a white in color shed can be observed from the street, sitting in the back yard of the residence.

COCHISE COUNTY
SHERIFF'S OFFICE
OFFICIAL COPY

(X) in vehicle(s) described as:

A hot pink in color, 4 door Dodge Neon bearing an AZ license plate of CAL4298

Registered to: Sherril Rogers, White Female, 5'07", 140lbs, blue eyes, brown hair, DOB 10-25-59

VIN: 1B3ES56C63D254776

there is certain person (s), property or things

(x) Which were used as means for committing a public offense

(x) Which are being possessed with intent to use as a means of committing a public offense

(x) which consists of any item or constitutes any evidence which tends to show that a public offense has been committed such as being more fully described in the affidavit.

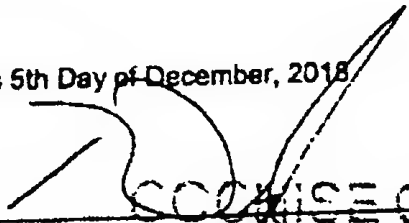
THAT SAID PROPERTY OR THINGS ARE DESCRIBED AS FOLLOWS:

"See Attachment A"

YOU ARE THEREFORE COMMANDED (In the day time) to make a search of the herein described person(s), premises or things and if you find such or any part thereof, to retain such in your custody in accordance with A.R.S. 13-3920.

YOU ARE THEREFORE COMMANDED to make due return of this writ within Five (5) days of the date thereof as directed by law in accordance with A.R.S. 13-3918.

GIVEN UNDER MY HAND or direction and dated this 5th Day of December, 2018


COCHISE COUNTY
Judge Dickerson
SHERIFF'S OFFICE
OFFICIAL COPY

Attachment A

1. Books, records, receipts, notes, ledgers, other papers, computers, computer disks, magnetic media or other means of electronically storing information relating to possession or sale of Methamphetamine and possession of drug paraphernalia.
2. Address and/or telephone books and papers reflecting names, addresses, and or telephone numbers of any persons who may be involved in the illegal possession and sale of Methamphetamine and possession of drug paraphernalia.
3. Books, records, receipts, bank statements and records, money drafts, letters of credit, money order and cashiers check receipts, passbooks, bank checks and other items evidencing the obtaining, secreting, transfer, and or concealment of assets and the obtaining, secreting, transfer, and or concealment of assets and the obtaining, secreting, transfer, concealment and or expenditure of money, safe deposit box records and or keys.
4. United States currency, precious metals, jewelry, and financial instruments, including, but not limited to, stocks and bonds and real estate deeds of trust.
5. Photographs, in particular, photographs of co-conspirators of assets and or of: Possession/ Sale of Methamphetamine and possession of drug paraphernalia.
6. A usable amount of: Illicit drugs

COCHISE COUNTY
SHERIFF'S OFFICE
OFFICIAL COPY₁₀

7. Paraphernalia for packaging, cutting, weighing, distributing and using Methamphetamine including but not limited to, scales, plastic envelopes, Pipes, Etc.
8. Indicia of occupancy, residency, and or ownership of the premises described above, including but not limited to, utility and telephone bills, canceled envelopes and keys.
9. All other material evidence of violations of ARS title 13 chapter 34.
10. Rent receipts, phone bills, utility bills or other indicia of ownership, dominion or control of the above described premises and or vehicles.
11. Telephone (s) and telephone messaging records, including subscriber and call records, statements, stored voicemail, stored telephone numbers, and or machine messages.

COCHISE COUNTY
SHERIFF'S OFFICE
OFFICIAL COPY